

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	08CR888
	)	
ROD BLAGOJEVICH	)	Judge James B. Zagel
	)	

**ADDITIONAL GROUNDS FOR MISTRIAL BASED UPON  
THE GOVERNMENT'S IMPROPER CLOSING ARGUMENTS**

Now Comes Defendant Rod Blagojevich, by and through his attorneys, and hereby provides additional grounds for mistrial based upon the government's closing arguments. The objections contained in this motion are not exhaustive; Blagojevich does not waive any further objections. In support, Blagojevich states as follows:

Throughout the government's closing arguments there were blatant misrepresentations of law which invaded the province of the jury. Perhaps the most glaring example was the improper assertions to the jury that it only had to ask one question and that the jury could find Blagojevich guilty if they only answered "yes" to that one question. Other examples abound but include the improper argument regarding "material misrepresentation," in which the government essentially ignored the "material" aspect of that element.

The government also relied upon old, post-*Skilling* honest services arguments, telling the jury an argument to the effect of, ‘the fraud of the people was the fraud because the process was dishonest.’

In addition, the government violated its own objection regarding “politics as usual.” The defense was expressly barred from making any reference to this, (based on the false assumption by the Court and the government that this was in fact the defense theory). The government argued to the jury essentially that because Blagojevich is a politician he is a liar and a criminal. They highlighted this by ending their opening –closing argument with the quote regarding the Ryan conviction, telling the jury the statement came ‘after the conviction of another public official. . .’

The government made erroneous arguments regarding ‘facts’ that the government knows to be false. For example, the government argued that Pat Magoon was unfamiliar with fundraising. This is factually inaccurate. The defense was barred from proving up Magoon’s knowledge and involvement in fundraising, and the government used that against the defense by arguing that he was not. This was improper.

However, even more egregious was the government’s argument to the jury in rebuttal closing regarding Bradley Tusk.

The government told the jury that “this comes down to who you believe – Blagojevich or Bradley Tusk.” The government continued on that Tusk had “no motive to lie.” The defense objected several times and the government continued on

with this improper argument. The government knows full well that Tusk had a motive to lie. The defense was barred, based on a government motion *in limine*, from asking Tusk about his statement.

To remind the Court, in summary: when Tusk was leaving the Office of the Governor he tried to get a job at Goldman Sachs. Tusk believed that Governor Blagojevich prevented him from getting this prestigious job. Tusk was furious with Blagojevich about this and held it against him, making comments about getting retribution. Tusk told Bob Greenlee that he (Tusk) ‘could make things really bad for Blagojevich.’<sup>1</sup> John Harris corroborates that Tusk was angry with Blagojevich when he left and that he left on bad terms.

The government knows that evidence exists and that is the truth – even if it was not evidence presented in court. To then go before the jury and argue there was no motive is entirely improper and an egregious falsehood. This prejudiced Blagojevich in an extraordinary way, particularly because the government told the jury, in the same breath, that the case comes down to who the jury believes between Blagojevich and Tusk.

A mistrial is warranted. If the Court does not grant this request for mistrial, the Court should bring the jury out and instruct the jury that some factual inaccuracies were made and that the record needs to be corrected. At that point, the government should correct its false statements to the jury.

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<sup>1</sup> Counsel for Blagojevich understands that the government may argue that Tusk was referencing calling the F.B.I. or some law enforcement. While defense counsel disagrees with the government’s interpretation, it is of no moment to this issue. The facts presented to the jury by the government regarding an absolute lack of motive to lie were patently false.

WHEREFORE, the Court should grant Blagojevich's motion for mistrial.

Respectfully Submitted,  
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